No. 534 1909.

IN THE

SUPREME COURT OF THE UNITED STATES.

In the Matter of the Application of JOHN H. WISE, Collector, Etc.,

Petitioner and Appellant,

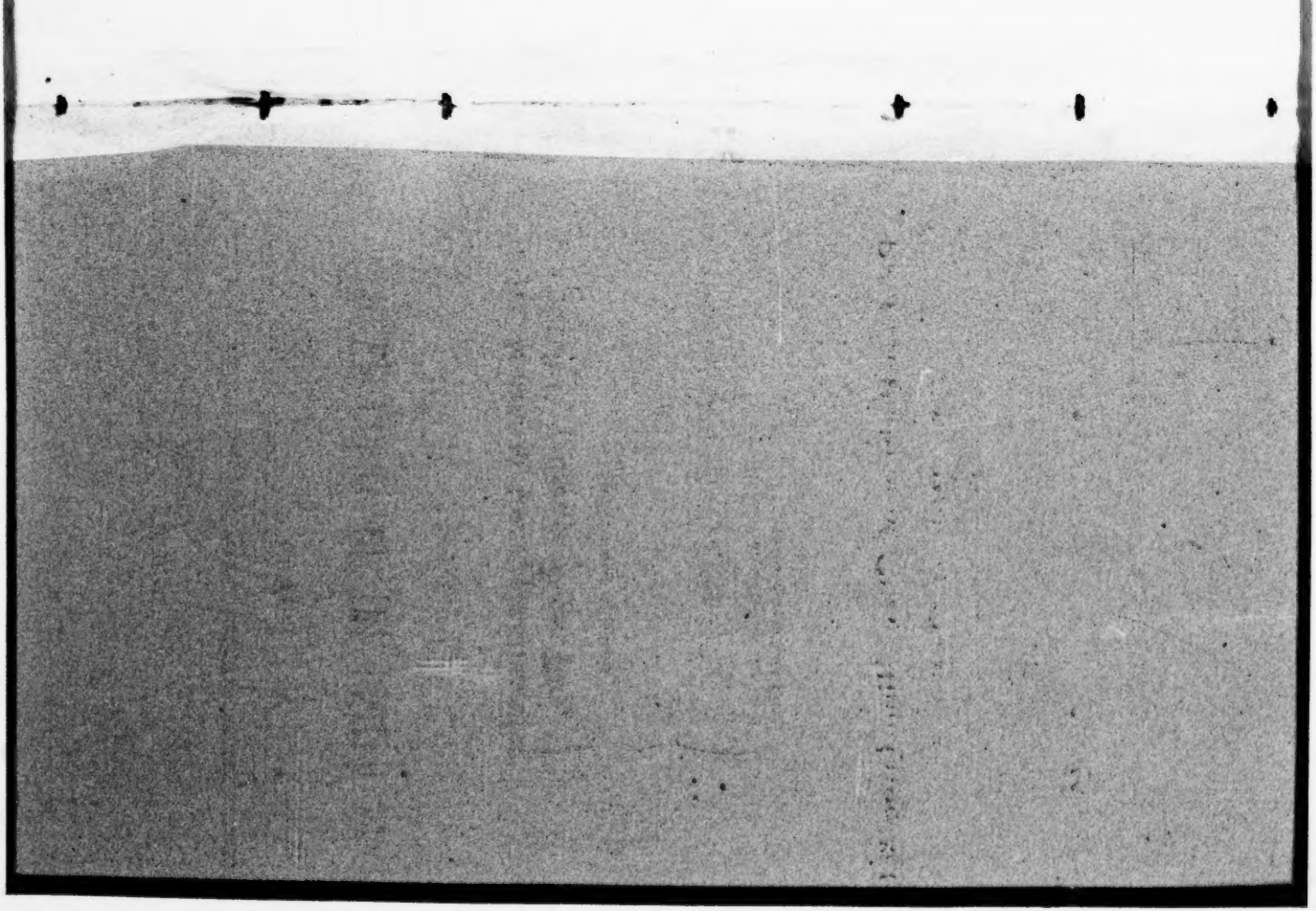
vs.

CHEW HING LUNG & CO.,

Respondent and Appellee, and Petitioner in this Court.

Petition of Chew Hing Lung & Co. for a Writ of Certiorari to review the Judgment of the Circuit Court of Appeals for the Ninth Circuit in the above-entitled matter.

CHARLES PAGE,
Counsel for Petitioner.



IN THE

Supreme Court of the United States.

IN THE MATTER OF THE APPLICATION OF
JOHN H. WISE, COLLECTOR, ETC.,
Respondent herein,
vs.
CHEW HING LUNG & CO.,
Petitioners herein.

Petition of Chew Hing Lung & Co. for a Writ of Certiorari to Review the Judgment of the Circuit Court of Appeals for the Ninth Circuit in the above-entitled Matter.

To the Honorable the Supreme Court of the United States:

The petition of Chew Hing Lung & Co. respectfully shows to the Court:

That on the 29th of October, 1894, John H. Wise, Collector of Customs of the Port of San Francisco, applied to the Circuit Court of the United States for the Ninth Circuit to review the questions of law and fact involved in the decision of the United States General Appraisers on duty at the port of New York, made and rendered by them on the 15th of October, 1894, in which that body held certain imported merchandise to be "*tapioca flour*" and entitled to free entry as "*tap-*

ioca," under paragraph 730 of the McKinley Act of 1890, overruling the classification theretofore made by the appraisers at San Francisco and himself of the article as *starch*, dutiable at two cents per pound.

That the Circuit Court thereafter on the 11th of July, 1897, made its findings and judgment in the said matter affirming the decision of the U. S. General Appraisers.

That an appeal was thereupon taken by the Collector to the Circuit Court of Appeals for the Ninth Circuit, which, on the 4th of October, 1897, reversed the judgment of the Circuit Court and ordered judgment on the findings in favor of the Collector.

The findings of fact were substantially as follows:

1. The imported article consisted of the starch grains contained in and derived, by washing and scraping, from the root botanically known as *jatropha manihot.* In the West Indies, the shrub is known as cassava or manioc; in Brazil, as mandioc. This root contains a large proportion of starch.

2. In the general importing markets of the United States, the article is commercially known as tapioca flour. In these markets, the term "tapioca" includes that article in three forms, viz.: flake tapioca, pearl tapioca, and tapioca flour.

Among the white people dealing with the Chinese on the Pacific Coast, the article is commonly known as "Chinese starch." The importation was made by Chinamen for the purpose of supplying Chinese laundrymen who use it as starch, and to a slight extent,

for food purposes. Its use for these purposes is limited to the Chinese, except that in some cases white laundrymen in San Francisco use it for mixing with wheat or corn starch. The article is fit for use as starch in laundry work, in the sense that by its use clothes can be starched, but it is not commonly used in such work as starch throughout the United States, and is not known to be so used except on the Pacific Coast to the extent already stated.

In the Eastern States, the article is imported and used for starch purposes by calico printers and carpet manufacturers to thicken colors, for bookbinding, in the manufacture of paper, gum arabic, confectionery, etc.

Upon these facts, the importer contended that the article was tapioca, commercially so known, and that it was entitled to free entry under paragraph 730, which places on the free list:

"Tapioca, cassava or cassady."

The collector contended that the article was dutiable at two cents per pounds under paragraph 323:

"Starch, including all preparations, from whatever "substance produced, fit for use as starch."

The Court of Appeals reversed the judgment of the Circuit Court and decided that the article, though commercially tapioca and mentioned, *eo nomine*, as free, was intended, nevertheless, to be dutiable under the starch clause. The authority for this ruling was found by the Court in the case of *Magone* vs. *Heller*, 150, U. S., 70.

The petitioner believes that the decision of the Court

of Appeals was erroneous and should be reviewed by this Court. The cause is an exceedingly important one in several respects.

a. It involves the right of importers on the Pacific Coast to a return of a large amount of duties exacted from them, while Eastern importers of the same article, during the same time, were allowed to import the same article free, under the decision hereinafter referred to.

b. The Circuit Court of Appeals of the Second Circuit has held that the article is not fit for use as starch, within the meaning of the act, and is free, though it may be and is used for purposes analogous to those for which starch is used. (*In re* Townsend, 56 F. R., 222.) That Court, under the circumstances, found no occasion to determine the effect of its specific designation as free upon the starch clauses.

c. The article has been admitted to free entry, under treasury decisions, for more than twenty years as tapioca, under a precisely similar wording in the free list.

d. If tapioca flour (the starch grains precipitated by mere scraping and washing the root of the shrub, without other preparation than drying) is to be deemed starch, or a preparation fit for use as starch, simply because it may be in some degree applied to starch purposes, arrowroot and sago, both nearly pure starches, which are also on the free list, must likewise be held to be dutiable. This cannot have been the intention of Congress.

e. The Dingley Bill has re-enacted the McKinley Bill in the two clauses under consideration. Conse-

quently, if the decision of the Court of Appeals be erroneous, the illegal exaction will continue for years, unless now corrected. The article will be free in the Eastern ports, under the ruling of the Circuit Court of Appeals of the Second Circuit, while charged with a heavy duty on the Pacific Coast, under the decision now sought to be reviewed.

The petitioner contends, as a matter of law, that the general language of the starch clause, if broad enough to embrace an otherwise non-enumerated article, must nevertheless be subordinate to the specific designation of the article in the free list, in the absence of manifest evidence from the act itself, that the mere adaptability of the article, by reason of its chemical character, to a certain use, should give it another classification. The petitioner further contends that no such evidence exists in the act of 1890.

He further contends that as starch, known to commerce and the law, is a manufactured article intended primarily for the laundry, the "preparation fit for use as starch" made dutiable in that clause must have been intended to be a manufactured article designed and chiefly used as a substitute for commercial starch in laundry uses.

He further contends that, as the uses of tapioca flour as food and in the manufactures of the country had been known to Congress for more than twenty years, for which uses it had been granted free entry, the re-enactment in the act of 1890 of the free list in the same words used in prior acts, must be deemed to show an

intention by Congress that tapioca flour should continue to enter free for the same uses.

He further contends that the Court of Appeals erred in holding that the use of tapioca flour by a few Chinese laundrymen was such a use as would justify its classification by use within the meaning of the act, as a preparation fit for use as starch, and he further contends that the use of the article in the manufactures is not a use "as starch" within the meaning of the law.

Your petitioner herewith presents to this Court and files a duly certified copy of the entire record of the lower Court in the case as the same appears in the said Circuit Court of Appeals, including the opinion, together with a brief, which discusses the question at issue, and copies of the decisions of the Treasury Department, the latter having by agreement been submitted as printed in the reports of the Department.

Your petitioner prays that the writ of *certiorari* be issued out of and under the seal of this Court directed to the Circuit Court of Appeals of the United States for the Ninth Circuit, commanding the said Court to certify and send to this Court on a day certain, to be therein designated, a full and complete transcript of the record and of all the proceedings of the said Circuit Court of Appeals "In the matter of the application of John H. Wise, Collector, &c. *vs.* Chew Hing Lung & Co.," to the end that this said case may be reviewed and determined by this Court as provided by section 6 of the Act of Congress entitled, "An Act to establish Circuit Courts of Appeal "and to define and regulate in certain cases the juris-

" diction of the Courts of the United States, and for " other purposes, approved March 3, 1891."

And your petitioner further prays that the said judgment of said Circuit Court of Appeals be reversed and the cause remanded with instructions to enter a judgment in favor of your petitioner and against John H. Wise, Collector, &c., upon the findings of a fact heretofore made in the case and the evidence therein.

And your petitioner will ever pray, &c.

CHEW HING LUNG & CO.,
Petitioner.

CHARLES PAGE,
Mills Building, San Francisco, Cal.,
Counsel for Petitioner.

UNITED STATES OF AMERICA,
Northern District of California, } ss.

Charles Page, being duly sworn, deposes and says: I am counsel for the petitioners above named, and as such have had personal charge of the case in the Circuit Court of the United States for the Northern District of California, and in the Circuit Court of Appeals for the Ninth Circuit. I know the contents of the foregoing petition. The facts therein stated are true to the best of my knowledge, information, and belief.

CHARLES PAGE.

Subscribed and sworn to before me this 22nd day of November, 1897.

F. D. MONCKTON,
Clerk U. S. Circuit Court of Appeals, Ninth Circuit.

seal.

Certificate of Counsel.

I hereby certify that I have carefully examined the foregoing petition and application for a writ of *certiorari*, and that in my opinion the same is well founded, and the case is one in which the prayer of the petitioner should be granted by this Court.

CHARLES PAGE.
Counsel for Petitioner

To H. S. Foote, Esq., United States Attorney; Samuel Knight, Esq., Asst. U. S. Attorney:

Please take notice that on the 18th day of December, 1897, on the opening of Court, or as soon thereafter as the matter can be heard, I shall move the Supreme Court of the United States at the court room thereof in the City of Washington, D. C., that the foregoing petition for a writ of *certiorari* be granted.

Dated at San Francisco, this 22nd day of November, 1897.

CHARLES PAGE,
Counsel for Petitioner.

Service of above and receipt of copy thereof, together with copy of the petition, is hereby admitted at San Francisco, California, this 22nd day of November, 1897.

H. S. FOOTE,
U. S. Attorney,
SAMUEL KNIGHT,
Asst. U. S. Attorney,
Counsel for John H. Wise, Collector.